

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.13268 of 2003

N.Kamatchi Nadar .. Petitioner

-Vs-

1. The Government of Tamilnadu
rep. by the Secretary to Government
Commercial Taxes and Religious
Endowment Department, Fort St.George
Chennai-600 009.

2. The Inspector General of Registration
Department of Registration
Santhome High Road, Chennai-600 004.

3. The Registrar of Societies
Virudhunagar.

4. Tiruchuli Hindu Nadar Uravinmurai
Society (Regd.No.84/2000) rep. by
its General Secretary, Mr.Jayaratchagan
Peria Kadai Veedhi, Tiruchuli.

5. Tiruchuli Hindu Nadar School
Society (Regd.No.57/1997) rep. by
its General Secretary, Mr.G.Selvaraj
Peria Kadai Veedhi, Tiruchuli.

6. Tiruchuli Hindu Nadar Uravinmurai
Paripalana Sabha Society (Regd.No.111/2000)
rep. by its General Secretary,
Mr.S.Krishnamoorthy, Peria Kadai Veedhi,
Tiruchuli. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for
issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.K.Chandru
Senior Counsel for Ms.K.Subhashini

For Respondents : Mr.P.Gunaraj
Spl. Government Pleader
for respondents 1 to 3
Mr.S.Natarajan for 4th respondent

No appearance for respondents 5 & 6

ORDER

1.1. The petitioner claims that he is a member of the Tirusuli Hindu Nadar Uravinmurai Society, bearing registered No.67 of 1973 under the Registration of Societies Act XXI of 1860.

1.2. The Tirusuli Hindu Nadar Uravinmurai Society was established and registered to raise contributions from the Hindu Nadars residing at Tiruchuli to run income generating businesses out of the said funds; to maintain establishments as well as properties of the society properly; to purchase buildings and new properties; to spend the income derived thereunder to establish educational and social institutions for the benefit of the general public; to establish and run libraries, schools, colleges, hospitals; to continue the spiritual festivals undertaken by the members of the society hitherto; to help the general public as well as the societies and institutions of similar object; to give financial aid to the poor students either by loan or by providing books; to help boys, girls as well as orphans and destitutes by constructing orphanage; to undertake social welfare activities.

1.3. In order to achieve the object, the said society established the following: (i) two higher secondary schools; (ii) one cinema theatre; (iii) dairy farms; (iv) one rice mill; and (v) one shopping complex.

1.4. However, the second respondent by proceedings dated 16.11.2000, exercising the powers conferred under Section 44 of the Tamilnadu Societies Registration Act, 1975, (i) declared the said erstwhile society as defunct and consequently as deemed to be dissolved; (ii) directed the third respondent to conduct an meeting with the members of 168 families of Hindu Nadars of Tiruchuli, who are members of the newly formed societies, viz., respondents 4 and 5, and to find out as to whom the management and administration of the two schools established by the erstwhile society should be entrusted; and (iii) found that the other two newly formed societies, bearing registration Nos.109 of 2000 and 111 of 2000, were established only to confuse the issue unnecessarily and directed to take appropriate action for the cancellation of registration of the said societies.

1.5. Pursuant to the proceedings dated 16.11.2000, the third respondent appears to have conducted a meeting among the members of 168 families of Hindu Nadars at Tiruchuli, who are members of the fourth and fifth respondent/ societies. Since, majority of the members expressed that the administration and the management of the schools should be entrusted with the

fourth respondent, the third respondent by his proceedings dated 3.9.2001 entrusted the administration and management of the schools with the fourth respondent/society and permitted the fourth respondent/ society to make appropriate amendments in their bye-laws.

1.6. Aggrieved by the proceedings dated 16.11.2000 of the second respondent and the consequential proceedings dated 3.9.2001 of the third respondent, the petitioner seeks a writ of Certiorarified Mandamus to call for the records relating to the orders passed by the second respondent dated 16.11.2000 in Pa.Mu.No.26447/A5/2000 and the order passed by the third respondent dated 3.9.2001 to quash the same and to consequently direct the respondents to initiate proceedings for dissolution of Tiruchuli Hindu Nadar Uravinmurai Society bearing registration No.67 of 1973 as per the orders in G.O.No.2065/E/87.

2.1. Mr.K.Chandru, learned senior counsel appearing for the petitioner challenges the very decision of the second respondent dated 16.11.2000 holding the Tiruchuli Hindu Nadar Uravinmurai Society bearing registration No.67 of 1973 as defunct, as such a decision was not taken or passed in consonance of the procedure contemplated under Section 44 of the Tamilnadu Societies Registration Act, 1975.

2.2. The learned senior counsel also points out that even though the first respondent in the gazette notification dated 29.4.1987, by exercising the power under Section 44 of the Act notified that the Tiruchuli Hindu Nadar Uravinmurai Society bearing registration No.67 of 19 73 has become defunct, no appeal was preferred against the said order by any member or creditor of the erstwhile society as provided under Section 44(5)(a) of the Tamilnadu Societies Registration Act, 1975, and it was also contended that the first and

second respondents have not taken any steps as contemplated under Sections 44(5)(b), 44(6), 44(7) and 44(8) of the Tamilnadu Societies Registration Act, 1975.

3. Mr.P.Gunaraj, learned Special Government Pleader appearing for the respondents 1 to 3 fairly concedes that the second respondent in his proceedings dated 16.11.2000 directed to convene a meeting among the members of the 168 families of Hindu Nadars at Tiruchuli, who were admittedly members of the newly formed societies, viz., respondents 4 and 5, but not with the members of the erstwhile society alone; and that no meeting was conducted giving notice to the members of the erstwhile society which was declared defunct by the gazette notification dated 29.4.1987.

4. Mr.S.Natarajan, learned counsel appearing for the fourth respondent inviting my attention to Section 44(4) of the Tamilnadu Societies Registration Act, 1975 seriously contends that once the erstwhile society was declared defunct it is deemed to be dissolved and hence, the second and third respondents were constrained to take a decision on just and equitable basis by calling for a meeting among the members of 168 families of Hindu Nadars at Tiruchuli, who are members of the newly formed societies, and taking a

majority decision, and therefore, there is no illegality in the proceedings dated 16.11.2000 or the consequential proceedings dated 3.9.2001.

5. I have given careful consideration to the submissions of both sides.

6. In this regard, it is apt to refer Section 44 of the Tamilnadu Societies Registration Act, 1975, which reads as follows:"Section:44 - Removal of defunct registered societies:-

(1) Where the Registrar has reasonable cause to believe that a registered society is not carrying on business or in operation, he shall send to the registered society by registered post a letter enquiring whether the society is carrying on business or in operation.

(2) If the Registrar either receives an answer from the registered society to the effect that it is not carrying on business or in operation, or does not within such period as may be prescribed after sending the letter receive any answer, he may publish in the Tamilnadu Government Gazette, and send to the registered society by registered post, a notice that, at the expiration of such period as may be prescribed from the date of such publication, the name of the registered society mentioned therein will, unless cause is shown to the contrary, be struck off the register and the registered society will be dissolved.

(3) If, in any case where a registered society:-

(a) is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the registered society have been completely wound up; or

(b) has not, for three consecutive financial years, filed with the Registrar all or any of the documents referred to in clause (b) of sub-section (3) of section 16,

the Registrar may publish in the Tamilnadu Government Gazette, and send to the registered society by registered post, a like notice as is provided in sub-section (2) of this section.

(4) At the expiration of the time mentioned in the notice referred to in sub-section (2), or sub-section (3), the Registrar may, unless cause to the contrary is previously shown by the registered society, strike its name off the register and shall publish notice thereof in the Tamilnadu Government Gazette, and, on the publication of such notice, the registered society shall be deemed to be dissolved:

Provided that the liability, if any, of every officer and member of the registered society shall continue and may be enforced as if the registered society had not been dissolved.

(5) (a) if a registered society or any member or creditor thereof feels

aggrieved by the name of the registered society having been struck off the register, such registered society, member or creditor may, within such period as may be prescribed from the date of the publication in the Tamilnadu Government Gazette of the notice of striking off the name of the registered society, appeal (i) where the name of the registered society is struck off by the Inspector-General of Registration, to the Government; (ii) in any other case, to the Inspector-General of Registration.

(b) The Government or the Inspector-General of Registration on being satisfied that the registered society was, at the time its name was struck off, carrying on business or in operation or otherwise that it is just and equitable that the name of the registered society be restored to the register, may order such restoration.

(6) If a registered society or any member or creditor thereof feels aggrieved by the order of the Government or the Inspector-General of Registration under sub-section (5), the court may, on the application of such registered society, member or creditor, made within such period as may be prescribed from the date of the receipt by such registered society, member or creditor, of such order, and on being satisfied that it is just and equitable that the name of the registered society be restored to the registrar, order such restoration.

(7) The registered society whose name is restored to the register under sub-section (5) or sub-section (6) shall be deemed to have continued in existence as if its name had not been struck off; and the Government or the Inspector-General of Registration or the court, as the case may be, may, by order, give such directions and make such provisions as seem just for placing the registered society and all other persons in the same position, as nearly as may be, as if the name of the registered society had not been struck off.

(8) If the name of the registered society having been struck off the register, has not been restored or if the period allowed for appeal has lapsed or no appeal has been made or an appeal has been made but dismissed, under this Act, the registered society shall not function and the provisions of Section 39 shall apply as if the registration of such society has been cancelled."

7. A reading of Section 44(4), 44(5), 44(6) and 44(7) of the Act, prescribes the following procedure: (i) the Government on satisfying the provisions contemplated under Section 44(1), 44(2) and 44(3) of the Act shall notify the society as defunct in the Government Gazette under Section 44(4) of the Act, and on publication of such notice, the erstwhile society shall be deemed to be dissolved; (ii) against the said notification, the member of the society are alone entitled to make an appeal to the Government or the InspectorGeneral of Registration; (iii) on receipt of such appeal, the Government or the InspectorGeneral of Registration, should satisfy themselves as to whether the erstwhile Society is carrying on the business or in operation and if the Government or the Inspector-General of Registration arrive at a subjective satisfaction that they are carrying on business or are in operation, there should be a just and equitable decision on the same and in which event, the decision should be taken for the restoration; (iv) if a member or creditor is still aggrieved by the decision of the Government or the

Inspector-General of Registration, such aggrieved party shall move the competent court for their redressal; (v) subject to the decision made under Sections 44(4) and 44(5) of the Act, the registered society shall be deemed to have continued in existence subject to the provisions under Section 44(7) of the Act; and (vi) if the name of the erstwhile society is struck down, the same shall not function as per Section 44(8) of the Act.

8.1. In the instant case, there is admittedly a representation by some of the members of the fourth respondent-Society. On such representation addressed to the Inspector-General of Registration, the Inspector-General of Registration should have arrived at a subjective satisfaction as to the existing business or operation.

8.2. It is not in dispute that the business or operation of the erstwhile society is being carried on for the simple reason that the schools were being administered and managed, the theatres, the dairy farms and rice mills are running, as rightly found by the InspectorGeneral of Registration in his proceedings dated 16.11.2000.

8.3. Once the Inspector General of Registration has arrived at the subjective satisfaction, he is expected to take a just and equitable decision for the restoration of the erstwhile society, but not to handover the business to a newly formed society as proposed in the said order dated 16.11.2000.

8.4. For the purpose of restoration, the Inspector-General of Registration should have convened a meeting of only the members of the erstwhile defunct society, but instead he had chosen to call the members of the newly formed societies, and decided the issue on majority, which is in glaring violation to the procedure contemplated under Section 44(5)(b) of the Tamilnadu Societies Registration Act, 1975.

8.5. That apart, there is no agenda for the meeting held by the third respondent conducted pursuant to the order of the second respondent dated 16.11.2000. Assuming there was an agenda as to the handing over of the schools either to the fourth respondent or fifth respondent, the same cannot be construed as an agenda to meet the ends of justice and equity as sought to be achieved under Section 44(5)(b) of the Tamilnadu Societies Registration Act, 1975. The agenda should have been whether the erstwhile society should be restored or not.

9. It is true that when Thiruchuzhi Hindu Nadar Uravinmurai Pothu Abiviruthi Paripalana Maha Sabha, filed a W.P.No.21267 of 2001 challenging the order dated 3.9.2001 of the third respondent, this Court by order dated 7.11.2001 disposed of the same as follows:

".. 3. However, the petitioner has not questioned the decision taken by the Inspector General of Registration dated 16.11.2000 and holding the poll by the first respondent. Till the results were announced and secondly the Inspector

General of Registration thought that as the erstwhile sangam is defunct. The best way of deciding the issue and to resolve the stalemate regarding the management of the property and the school is by holding a referendum like in the special general body among the subsequently constituted members of the societies and its members. The said decision cannot be held to be arbitrary in the circumstances of the case. I find that the first respondent has conducted the proceedings fairly. A just decision was taken in the interests of the Society and the management of the school. However, if the petitioner is aggrieved, it is open to the petitioner to move the civil Court even with reference to the administration of the school. The administration and management of the school should not suffer on account of differences with members of the committees of the Societies. As such, I do not find any illegality in the order of the first respondent. The writ petition is dismissed."

10. It is clear from the reading of the said order dated 7.11.2001 made in W.P.No.21267 of 2001 that the same is dismissed taking note of the fact that the order dated 16.11.2000 was not challenged and therefore, the decision arrived pursuant to the meeting on 3.9.2001, was directed to be challenged before the Civil Court. But, when a serious challenge is made as to the very jurisdiction and authority of the second respondent in passing the order dated 16.11.2000, which was passed in violation to Section 44(5)(b) of the Tamilnadu Societies Registration Act, 1975, and the same was not dealt

with in the previous order dated 7.11.2001 made in W.P.No.21267 of 2001, I am constrained to entertain the present writ petition and pass the following order:

(i) the proceedings of the second respondent dated 16.11.2000 and the consequential proceedings dated 3.9.2001 of the third respondent stand quashed;

(ii) the third respondent is directed to convene a meeting among the members who were on the roll on the date of defunct of the erstwhile society by giving individual notices by registered post with acknowledgment due fixing a minimum of 21 days time with a specific agenda with respect to: (a) the carrying on and operation of business of the erstwhile society; and

(b) the restoration of the erstwhile society, and based on the majority decision in the meeting appropriate resolution shall be passed.

(iii) it is made clear that from the date of this order, the fourth respondent shall not make any appointments and shall also render the accounts relating to the administration and management of the schools to the third respondent for scrutiny and approval; and

(iv) in the event of any irregularity in the administration or management of the accounts, the fourth respondent shall be held responsible for the same.

This writ petition is ordered accordingly. No costs.

Index : Yes

Internet : Yes

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sasi P.D.DINAKARAN,J.

To: 1. The Government of Tamilnadu rep. by the Secretary to Government
Commercial Taxes and Religious Endowment Department, Fort St.George
Chennai-600 009.

2. The Inspector General of Registration Department of Registration Santhome
High Road, Chennai-600 004.

3. The Registrar of Societies Virudhunagar.

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